

Wrongful Termination in Virginia

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Our firm often sees a number of issues arise in representing employees in the Commonwealth of Virginia with respect to wrongful termination matters. In our experience, there tends to be a significant connection between the termination of an employee by an employer and the employer's later opposition to the employee's attempt to seek unemployment compensation. When dealing with these types of issues, it is important to seek out the advice of a Virginia employment attorney knowledgeable in these areas of law.

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It can be very difficult enough for an employee to be called into their supervisor's office, or to their employer's human resources office only to be informed that their employment has been terminated. Typically, the employee is unaware of the plans of their employer to fire them and is fairly surprised when it happens. Following the notice of termination, usually the employee is escorted out of the building and is faced with a sense of shock and loss.

Termination proceedings in Virginia are at will, which generally leaves significant discretion to employers in decisions to hire and fire employees. However, if the employer has violated a state or federal law in terminating the employee (e.g. discrimination, whistleblowing), the termination can be considered wrongful (wrongful termination) and potential avenues to challenge the termination may be available.

First Step - Evaluate Your Legal Options

The first step that a Virginia employee should take following an involuntary termination is to make an appointment with a Virginia employment lawyer to review the issues related to the termination action in order to determine whether it can be considered a "wrongful termination." It is also important to consult with an attorney to see what steps may be taken to minimize the career damage that has just occurred and whether the action taken may be appealable.

It is often the case that employees have more options following a termination action than is apparent to them on the day of termination. The employer may have broken federal or Virginia laws with respect to the termination action. If so, then it may be possible to negotiate a resolution on behalf of the employee with the employer. This generally happens when the employee retains an attorney to contact the employer about the inappropriate nature of the employee's termination when it has done so in violation of applicable employment laws.

Second Step - Consider Filing for Virginia Unemployment Compensation

Following an employee's termination, many Virginia employees ask our firm whether they should also apply for unemployment compensation. While our firm principally represents employees in wrongful termination proceedings (as opposed to representing employees in the actual unemployment compensation hearings), we often advise them on issues involving their unemployment compensation matters as they can relate to their wrongful termination cases.

The answer as to whether an employee should apply for unemployment compensation depends on the factual circumstances of the termination. Even if an employer terminates an employee in Virginia for alleged misconduct, they may still be able to seek and obtain unemployment compensation. The hearing examiners in Virginia, especially as of the last few years, have tended to be reasonable when evaluating misconduct issues.

In addition, in Virginia the employer has the burden of proof if they want to argue that the employee was terminated for misconduct. The employer essentially has to prove that the employee violated a significant company rule (and it usually must be a clear rule). In addition, it is often the case that an employee, through wrongful discharge negotiations may obtain a resolution where the employer agrees not to contest unemployment. Finally, an employee should keep in mind that if they are terminated for poor performance, as opposed to misconduct, that Virginia generally grants unemployment compensation in those types of cases.

So, while a lot depends on unique factual circumstances in each case, and each case should be discussed with an attorney, it may very well be worth it to consider filing for unemployment compensation in Virginia even if the employer has alleged misconduct or egregious performance issues in the termination.

Contact Us

When facing wrongful termination issues in Virginia it is important to obtain the advice of and representation of counsel. Our law firm advises and represents individuals in wrongful termination matters in Virginia and other jurisdictions. We can be contacted at www.berrylegal.com or by telephone at (703) 668-0070.

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Practice Areas

Virginia Employment Lawyers